

Advisory Opinion

IECDB AO 2008-09

August 28, 2008

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on 527 committees making campaign contributions. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

The issue has been raised concerning the ability of so-called 527 committees to make campaign contributions to Iowa committees.¹ After reconsidering the issue, the Board issues this opinion on the future conduct these committees take as follows:

1. If the 527 committee accepts donations from corporations, insurance companies, or financial institutions, then pursuant to Iowa Code section 68A.503 it cannot make contributions to a candidate, political party, or political committee (PAC) that advocates for or against candidates or make independent expenditures.
2. If the 527 committee sets up a separate PAC and complies with all of Iowa Code chapter 68A concerning disclosure and source of contributions, then there is no issue under the campaign laws for the 527 committee to operate in this manner.
3. A 527 committee that is not a registered PAC with the Board is not permitted to make contributions to Iowa committees by filing a verified statement of registration (VSR). Iowa Code section 68A.201(5) permits a committee or organization "not organized as a committee" under Iowa's campaign laws to make a contribution and file a VSR if the committee or organization files "financial activities with the federal election commission or another state's disclosure commission." As the Internal Revenue Service is not the "federal election commission or another state's disclosure commission," this section does not permit a 527 committee to make contributions and file a VSR in Iowa.
4. A 527 committee is not permitted to make a one-time contribution and file Form DR-OTC as a "permanent organization" under Iowa Code section 68A.402(9). That statute defines "permanent organization" as an "organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election

activities.” A 527 committee is granted that status for federal tax purposes by virtue of being engaged in election activities. Therefore, it cannot be a “permanent organization” under this section and cannot make a one-time contribution to an Iowa committee and file Form DR-OTC.

In closing, the Board encourages an organization that wants to engage in issue advocacy election activities to contact the Board for guidance to ensure that none of the state campaign finance laws in Iowa Code chapter 68A will be triggered by the organization’s activities.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ A 527 committee for purposes of this opinion refers to an organization that files reports with the Internal Revenue Service because it engages in election related activities, but does not expressly advocate for or against candidates or ballot issues in Iowa and is not otherwise registered as a political committee with the Board.